

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MUHAMMAD KHAN,
Plaintiff,

v.

HALEY MADSEN, et al.,
Defendants.

Case No. 23-cv-06141 BLF (PR)

**ORDER DENYING MOTION TO
DISQUALIFY JUDGE; GRANTING
ADMINISTRATIVE MOTION TO
UPDATE EXHIBIT TO AMENDED
COMPLAINT; INSTRUCTIONS TO
CLERK**

(Docket Nos. 12, 13)

On December 26, 2023, Plaintiff, a state prisoner, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Dkt. No. 5. Then on December 29, 2023, Plaintiff filed a motion for extension of time to file an amended complaint, Dkt. No. 8, which the Court granted. Dkt. No. 9. Plaintiff filed an amended complaint on January 19, 2024, Dkt. No. 10, and then another “final updated complaint prior to screening” on January 22, 2024. Dkt. No. 11. Then on February 14, 2024, Plaintiff filed an administrative motion to update one of the exhibits filed in support of his amended complaint. Dkt. No. 12.

On March 4, 2024, Plaintiff filed a “submission to disqualify” the undersigned

1 pursuant to “USDC LCR 3-14 and 28 USC 144.” Dkt. No. 13.¹ The Court will construe
2 this filing as a motion for recusal.

3 Plaintiff asserts that the undersigned is biased and prejudiced against him. Dkt. No.
4 81 at 1. He asserts that the Court’s decisions seem to be “personal and always against”
5 him, and “always against” any substantive ruling in his favor. *Id.* He points to rulings in
6 favor of Defendants in a different matter regarding a labor dispute. *Id.* at 2. In this matter,
7 Plaintiff asserts that the undersigned has delayed screening the matter and “will act with
8 prejudice knowing the subject matter is ‘woman accusing man’ of indecency.” *Id.* He
9 asserts that Defendant Madsen is a “white, American woman just like Freeman” and that
10 the undersigned has “presided over numerous Criminal Defendants who are accused/found
11 guilty of sexual crimes and has ruled against those men and sentenced them to long terms
12 of imprisonment.” *Id.* He also asserts that the assignment of his cases to the undersigned
13 has not been impartial, and that it appears that the undersigned has “asked and demanded
14 the clerk of the court” to assign all of Plaintiff’s cases to her over the past four years. *Id.* at
15 3. He asserts that although he “cannot pinpoint exactly what BLF may have against
16 [him],” he is certain that he “has not and will not receive fair and impartial rulings” in this
17 Court. *Id.*

18 Motions to recuse a district court judge fall under two statutes, 28 U.S.C. § 144 and
19 28 U.S.C. § 455. The substantive standard for recusal under 28 U.S.C. § 144 and 28
20 U.S.C. § 455 is the same: Whether a reasonable person with knowledge of all the facts
21 would conclude that the judge’s impartiality might reasonably be questioned. *United*
22 *States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012); *Yagman v. Republic Ins.*, 987 F.2d
23 622, 626 (9th Cir. 1993) (citation omitted). Sections 144 and 455 ask whether a reasonable
24 person perceives a significant risk that the judge will resolve the case on a basis other than

25
26 ¹ He filed one document which included the case numbers for three pending matters before
27 this Court: 20-cv-03086 BLF, 23-cv-06141 BLF, and 24-cv-00717 BLF. Dkt. No. 81. The
28 same document was filed in each of these cases. The Court will only address the
arguments therein that are relevant to this case.

1 the merits. *Clemens v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 428 F.3d 1175,
2 1178 (9th Cir. 2005). The reasonable person in this context means a well-informed,
3 thoughtful observer, as opposed to a hypersensitive or unduly suspicious person. *Id.*

4 As a federal judge is presumed to be impartial, a substantial burden is imposed on
5 the party claiming bias or prejudice to show that this is not the case. *See United States v.*
6 *Zagari*, 419 F. Supp. 494, 501 (N.D. Cal. 1976). Plaintiff has failed to overcome this
7 presumption. First of all, there has been no undue delay in screening this matter. The
8 Court granted Plaintiff's request for an extension of time to file an amended complaint at
9 the outset of this action. Dkt. No. 9. Thereafter, Plaintiff filed two amended complaints
10 during January 2024, and most recently an administrative motion to update one of his
11 exhibits on February 14, 2024. Dkt. Nos. 10, 11, 12. Accordingly, it cannot be said that
12 the Court has unduly delayed screening his amended complaint in light of the fact that
13 Plaintiff's several filings have been relatively recent. Furthermore, Plaintiff's concern that
14 the Court "will act with prejudice" is purely speculative and based on an unfounded
15 accusation of gender bias. Plaintiff's allegation that bias is shown by this Court's rulings
16 against male defendants in matters involving sex crimes is also conclusory and wholly
17 unsupported; he fails to point to even one specific case in which a male defendant's guilt
18 was not proven beyond a reasonable doubt and the sentence imposed was not within
19 sentencing guidelines. Accordingly, Plaintiff has failed to show that a reasonable person
20 would perceive a significant risk that the undersigned will resolve this case on a basis other
21 than the merits, *Clemens*, 428 F.3d at 1178, or overcome the presumption that this Court
22 has been fair and impartial in this action, *Zagari*, 419 F. Supp. at 501.

23 As for the assignment of his cases, the Local Rules provide that the Clerk shall
24 assign an action to a Judge pursuant to the Assignment Plan of the Court (General Order
25 No. 44). N.D. Civ. L.R. 3-3(a). Furthermore, the Local Rules state that the "Clerk may
26 not make or change any assignment, except as provided in these local rules or in the
27 Assignment Plan." *Id.* Accordingly, this Court has no authority over how the Clerk
28

1 assigns cases.

2 Plaintiff may appeal the decision to the Ninth Circuit, but otherwise has no basis for
3 moving to recuse the Court from this matter. This motion for recusal is **DENIED**. Dkt.
4 No. 13.


5 Plaintiff's administrative motion to update one of the exhibits to his complaint is
6 **GRANTED**. Dkt. No. 12. The Court will screen the "final" amended complaint, Dkt. No.
7 11, is due course.

8 The Clerk shall strike the amended complaint filed under Docket No. 10, which has
9 been superseded by the subsequent filing under Docket No. 11.

10 This order terminates Docket Nos. 12 and 13.

11 **IT IS SO ORDERED.**

12 **Dated: __March 7, 2024__**


BETH LABSON FREEMAN
United States District Judge